

*Docket No.: 1442.026  
Serial Number 10/055,513*

### **REMARKS**

Without acquiescing to the propriety of the rejections in the Office Action dated December 31, 2003, claims 1, 24, 28, 31, 34 and 40 have been amended. Entry of these amendments, reconsideration of the application, and allowance of all claims pending herein is respectfully requested in view of the remarks below, and the accompanying Request for Continued Examination. Claims 1-18, 21, 23-32, 34-36 and 40-41 are pending and under consideration.

#### **Election of Invention:**

Applicant hereby affirms the election of Species I, claims 1-18, 21, 23-32, 34-36, 40 and 41, which was made in a telephone conversation with the Examiner on March 29, 2004.

#### **Drawing Objection:**

The drawings stand objected to under 37 C.F.R. § 1.83(a) as failing to show every feature of the invention specified in the claims. Specifically, the "water source" and "air source" recited in claim 24 are alleged not to be shown in the drawings. FIG. 1 of the present application depicts a body mounted to a hydrotherapy tub having a water conduit 85 connected to a valve for distributing water and an air conduit 95 having an end which opens into an interior portion of a spa as described on page 5 of the present application. Thus, fluid flow system 10 is in fluid communication with a water source, e.g., water conduit connected to the valve and such system is also in fluid communication with an air source, e.g., air conduit 95 opening into an interior portion of a spa for receiving ambient air therefrom. Accordingly, it is respectfully submitted that all the features recited in this claim are depicted in the figures and this objection is believed to be overcome.

Also, paragraph [0026] of the specification is objected to since the reference numerals do not agree with the figures. Specifically, numerals "205" and "200" are alleged to designate the same element. As depicted in FIG. 5 and described in this paragraph, numeral "200" refers to a plurality of outlet covers while "205" refers to one of a such plurality. Thus, it is believed that the drawings and specification are correct in regard to reference numerals "205" and "200".

Also, in lines 8 and 9 of paragraph [0026] it is alleged that "72" should be "172". This has been amended per the Examiner's suggestion and this objection is believed to be overcome.

Further, in paragraph [0028] numeral "170" should be "200". Per the Examiner's suggestion, this correction has been made and the objection is believed to be overcome.

*Docket No.: 1442,026  
Serial Number 10/055,513*

**Claim Rejections Under 35 U.S.C. § 112:**

Claims 1-18, 21, 23-32, 34-36, 40 and 41 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification to reasonably convey to one skilled in the art that the inventor had possession of the claimed invention. Specifically, it is alleged that claims 1, 24, 28, 34 and 40 recite a body "immovable relative to said wall during operation" and that this is not described in the specification.

The standard for an adequate written description to support a particular claim turns on whether a person of ordinary skill in the art is able to recognize that what has been claimed has been invented by the applicant. Further, the written description requirement can be satisfied by a drawing if the subject matter claimed would be understood to one skilled in the art from the drawing and description. Moreover, the drawings alone may satisfy this requirement. See *Vas-Cath Inc. v. Mahurkar*, 19 U.S.P.Q.2d at 1116-1118 (Fed. Cir. 1991).

It is respectfully submitted that it would be evident to one skilled in the art that fluid flow system 10 is not movable relative to a wall of a spa from FIGS. 1 and 2 which show such system being inserted through a hole in a wall of a spa, and being attached via nut 260 attached to threads 255 of side walls 250. Such depiction alone satisfies the requirement for an adequate written description to convey to one skilled in the art that the inventor had possession of the invention at the time the application was filed.

Claim 24 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter of the invention. Specifically, it is allegedly unclear whether the "water source" and "air source" are intended to be part of the claimed combination since a structure of the "hydrotherapy tub" is defined as being connected thereto in lines 3-5, but no positive structural antecedent basis therefore has been defined.

Claim 24 has been amended to recite an air source and a water source. Thus, the "water source" and "air source" are specifically recited in this claim and an antecedent basis therefore has been defined.

**Claim Rejections Under 35 U.S.C. § 102:**

Claims 1-10, 16-18, 21, 23 and 28-32 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Martin (U.S. Patent No. 1,892,259). Specifically, this reference is alleged to disclose a fluid flow system including a body having a first chamber with an inlet, a second chamber having an inlet, and a plurality of perpendicular outlets. The "hydrotherapy-tub" is allegedly not set forth as part of the claimed

*Docket No.: 1442.026  
Serial Number 10/055,513*

combination, but merely as an intended use and the '259 body is allegedly capable of performing the recited function of receiving water and air through a single opening in the tub. Further, the '259 body is allegedly capable of being "immovable relative to said wall during operation". Also, regarding claims 16-18, 21 and 28, each outlet/chamber/inlet allegedly meets the intended use of "water" and "air" as these labels allegedly do not define any particular structure.

Amended claim 1 of the present application recites a fluid flow system for a hydrotherapy tub which includes a body and a plurality of outlets. The body is configured to be attached to a hydrotherapy tub having an opening through a surface of the tub such that the body covers the opening and the body is immovable and affixed to the surface during operation. The body further includes a first chamber and a second chamber. The body includes a water inlet configured to extend through the opening to transmit water through the opening to the first chamber. The body includes an air inlet configured to extend through the opening to transmit air through the opening to the second chamber. The plurality of outlets is in fluid communication with the first chamber and the second chamber, and the outlets are configured to transmit water from the first chamber and air from the second chamber to an interior of the hydrotherapy tub.

Martin discloses an apparatus for insertion into a bathtub which is placed on an interior surface of the tub and receives fluid through rigid conduits which pass through an interior fluid containing portion of the bathtub. Specifically, referring to FIG. 11 per the Office Action, a pump external to the tub removes water from a stand pipe and re-circulates the water through the stand pipe to a manifold for injecting water and air to the interior of the tub. Ambient air is received into the manifold passively via a vertical pipe which extends above a water's surface of the tub. However, Martin does not disclose the apparatus disclosed therein being configured to be attached to a hydrotherapy tub having an opening through a wall of such tub. Further, there is no disclosure of a body having a water inlet configured to extend through an opening in a hydrotherapy tub to transmit water through such an opening to a first chamber. Martin does not disclose a body having an air inlet configured to extend through an opening to transmit air through such opening to a second chamber. Moreover, there is no disclosure of a body including such a first and second chamber which is configured to be attached to a hydrotherapy tub such that the body covers an opening thereof and is affixed relative to a wall of the hydrotherapy tub during operation. Instead, Martin discloses in FIG. 11 a device which rests on an interior surface of a tub, receives water via conduits which extend out of the tub over a side of the tub and receives air via a vertical pipe extending above a surface of the water contained in the tub. However, there is no disclosure in Martin of an opening in a tub which is covered by a body having a first chamber and a second chamber, nor water and air inlets of the body

*Docket No.: 1442.026  
Serial Number 10/055,513*

extending through such an opening to transmit water and air through the opening to the first and second chambers, nor the body being immovable and affixed to the surface of the tub during operation.

Regarding the allegation in the Office Action that the Martin '259 device is capable of receiving water and air through a single opening in a tub, there is no disclosure in this reference of receiving water and air through an opening in the tub. Instead, the water and air conduits in Martin extend through a water containing portion of a tub with the water conduits extending above a side of the tub and the air conduit extending vertically above a water's surface to allow ambient air to flow therein.

Further, it is not clear from the Office Action how the device in Martin could receive water or air from a single opening. In particular, there is no allegation how the stand pipe would receive water if it was located outside the water container portion of the tub, for example. Also, there is no indication of how the water supplying conduit and water expelling conduit would extend through a same opening in the tub or even different openings therein, particularly since these pipes appear to be rigid and thus not easily manipulated. It does not appear that such conduits are located relative to one another to allow them to extend through a single opening, and even if they were to extend through such a single opening, there is no allegation of how the tub would be sealed to prevent leakage through such opening. Moreover, the device in FIG. 11 includes a vertical pipe for receiving ambient air, and there is no allegation of how such vertical pipe would be configured to extend through a same opening as the receiving and expelling water conduits, nor how such realigned air conduit would access ambient air. Further, there is no allegation of how the water and air conduits in Martin '259 could extend through such a single opening to allow a body thereof to cover such opening.

Thus, because the features (e.g., a body configured to cover an opening in a tub, the body having water and air inlets which are extendable through an opening to transmit water and air through such opening to a water and an air chamber, and such body being immovable and affixed to a surface of a tub during operation) of claim 1 of the present application are not identically disclosed by Martin '259, claim 1 cannot be anticipated thereby. The dependent claims are believed to be allowable for the same reasons and for their own additional features.

Claim 28 recites, *inter alia*, a body configured to be mounted to a hydrotherapy tub having an opening through a surface of the tub such that the body covers the opening and the body is immovable and affixed to the surface during operation. A water and an air inlet are configured to extend through the opening and to transmit water and air, respectively, through the opening. Further included is means for providing a plurality of jets of water-air froth to an interior of the tub from the body. As described above,

*Docket No.: 1442.026  
Serial Number 10/055,513*

Martin does not disclose a body configured to be mounted to a hydrotherapy tub such that the body is immovable and affixed to a surface of the tub during operation. Further, there is no disclosure in Martin of a body having inlets which are extendable through an opening in a surface of a tub to transmit water and air through such opening. Moreover, there is no disclosure in Martin of a body having a first and second chamber which is configured to be mounted to a hydrotherapy tub such that the body covers the opening. Therefore, because the elements of claim 28 are not identically disclosed by Martin, it is respectfully submitted that this claim is allowable. The dependent claims are believed to be allowable for the same reasons and for their own additional features.

**Claim Rejections Under 35 U.S.C. § 103:**

Claims 1-10, 16-18, 21, 23-32, 34-36, 40 and 41 stand rejected as being obvious over Martin '259 in view of Gardenier et al. (U.S. Patent No. 6,182,303). More specifically, the Office Action alleges that Martin '259 discloses all the features of the claims except for an opening which is allegedly disclosed in Gardenier. It is also alleged that it would be obvious to one of ordinary skill in the art to associate an opening with the tub disclosed in Martin '259 to facilitate installation thereof.

As described above, it is respectfully submitted that Martin '259 does not disclose all the features recited in claims 1 or 28, except for an opening in a hydrotherapy tub. Thus, a combination of Martin '259 and Gardenier et al. could not make claims 1 or 28 obvious, because such a combination would not result in all of the features recited in these claims.

As noted above, the device in Martin includes a water receiving conduit which flows to a stand pipe connected to a manifold and a water expelling conduit attached to the stand pipe which expels water over a top of the tub to return it to an external pump. An air conduit extends vertically from the manifold above a water's surface. There is no suggestion, teaching, or motivation in Martin, which would cause one skilled in the art to put a hole in the tub disclosed therein and attempt to fit the two water conduits and the air conduit therethrough. In fact, Martin teaches away from creating such an opening because water in Martin is supplied by the water conduit extending outside the tub, and a purpose of Martin is to use an existing tub or faucet for a bath apparatus. Further, even if there was a reason to create such an opening, the Office Action does not allege how such conduits would be aligned and would extend through the opening. For example, the air conduit is depicted as extending from the top surface of the manifold above a water's surface, but it is unclear how the manifold and/or vertical pipe would be realigned to allow it to extend through an opening in the tub, nor how such a realigned conduit would access ambient air. Further, there is no allegation regarding how the body could be affixed to a surface of the tub such that the body

*Docket No.: 1442,026  
Serial Number 10/055,513*

covers any opening therethrough. Moreover, there is no allegation in the Office Action of inlets which might extend through such an opening. Instead, the Office Action merely alleges that one of ordinary skill in the art would associate an opening with the Martin tub to facilitate installation. However, the Office Action does not allege a disclosure, teaching, or suggestion in Martin which would cause one to put such hole in a tub, nor how such a device would function.

Further, there are three embodiments of the Martin device disclosed, but despite the variation in the disclosed embodiments, none of these devices include an opening in the tub to allow water and air to pass therethrough and which is covered by a device affixed to the surface of such a tub. Instead, the routing of rigid water and air conduits away from the tub's surface in the depicted embodiments teaches away from such an opening. Thus, there is no teaching, suggestion or motivation disclosed in Martin '259 to cause one to combine Martin '259 with Gardenier et al. or to provide the tub disclosed in Martin with an opening, as alleged in the Office Action. As noted, the Office Action alleges that it would be obvious to associate an opening with the tub in Martin '259 to facilitate installation thereof, but there is no teaching, suggestion, or motivation in Martin '259 to cause one to look to Gardenier or create such an opening and in fact there are three embodiments disclosed in this reference, none of which envision an opening in the tub disclosed therein. Instead, it is only with impermissible hindsight reasoning of applicants' invention that Martin '259 and Gardenier et al. have been combined in an attempt to support an obviousness rejection of the independent claims. Such hindsight reasoning is improper.

Thus, because there is no suggestion or motivation alleged in the Office Action, or disclosed in Martin '259, to combine Martin '259 with Gardenier, and such combination is done only with impermissible hindsight reasoning, the alleged combination cannot make the claims of the present application obvious.

Claims 11-15 also stand rejected as being obvious over Martin '259, alone or in view of Gardenier, and in further view of Guiler (U.S. Patent No. 3,345,982). As noted above, it is not proper to combine Gardenier et al. with Martin '259. Further, these dependent claims rely on the § 102 application to base independent claim 1 and are believed to be allowable for the same reasons as claim 1 described above and for their own additional features.

Also, claims 16-18 and 32 stand rejected as being obvious Martin '259 or Martin '259 taken with Gardenier and further in view of Martin '260. Claims 16-18 are believed to be allowable for the same reasons as base independent claim 1 described above, and for their own additional features. Claim 32 is

*Docket No.: 1442,026*  
*Serial Number 10/055,513*

believed to be allowable for the same reason as amended claim 28 described above, and for its own additional features.

*Docket No.: 1442.026  
Serial Number 10/055,513*

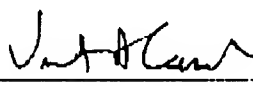
### CONCLUSION

It is believed that the application is in condition for allowance, and such action is respectfully requested.

If a telephone conference would be of assistance in advancing prosecution of the subject application, Applicant's undersigned attorney invites the Examiner to telephone him at the number provided.

*Respectfully submitted,*

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